



AlaFile E-Notice

57-CV-2008-000362.00

Judge: ALBERT L JOHNSON

To: SANDY GRISHAM ROBINSON
sgr@cabaniss.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

PHYLLIS HORACE VS. LASALLE BANK NATIONAL ASSOCIATION, ET AL
57-CV-2008-000362.00

The following matter was FILED on 12/29/2008 2:25:53 PM

**D006 BANK OF AMERICA
D002 BEAR STEARNS ASSET BACKED SE
D005 EMC MORTGAGE CORPORATION INC
D001 LASALLE BANK NAT'L ASSOC AS
D003 MORTGAGE ELECTRONIC REGISTRA
NOTICE OF REMOVAL**

[Attorney: ROBINSON SANDY G]

Notice Date: 12/29/2008 2:25:53 PM

**KATHY S. COULTER
CIRCUIT COURT CLERK
RUSSELL COUNTY, ALABAMA
POST OFFICE BOX 518
PHENIX CITY, AL 36868**

334-298-0516
kathy.coulter@alacourt.gov

Unified Judicial System

57-RUSSELL

☐ District Court☒ Circuit Court

CV20



ELECTRONICALLY FILED
12/29/2008 2:25 PM
CV-2008-000362.00
CIRCUIT COURT OF
RUSSELL COUNTY, ALABAMA
KATHY S. COULTER, CLERK

PHYLLIS HORACE VS. LASALLE BANK NATIONAL
ASSOCIATION, ET AL

CIVIL MOTION COVER SHEET

Name of Filing Party: D006 - BANK OF AMERICA

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

SANDY GRISHAM ROBINSON

POST OFFICE BOX 2906

MOBILE, AL 36652

Attorney Bar No.: GRI022

☐ Oral Arguments Requested

TYPE OF MOTION

Motions Requiring Fee

☐ Default Judgment (\$50.00)

Joinder in Other Party's Dispositive Motion (i.e.

☐ Summary Judgment, Judgment on the Pleadings, or
other Dispositive Motion not pursuant to Rule 12(b))
(\$50.00)☐ Judgment on the Pleadings (\$50.00)☐ Motion to Dismiss, or in the Alternative Summary
Judgment(\$50.00)

Renewed Dispositive Motion(Summary Judgment,

☐ Judgment on the Pleadings, or other Dispositive
Motion not pursuant to Rule 12(b)) (\$50.00)☐ Summary Judgment pursuant to Rule 56(\$50.00)☐ Motion to Intervene (\$297.00)☐ Other _____

pursuant to Rule _____ (\$50.00)

*Motion fees are enumerated in §12-19-71(a). Fees
pursuant to Local Act are not included. Please contact the
Clerk of the Court regarding applicable local fees.

☐ Local Court Costs \$ _____

Motions Not Requiring Fee

☐ Add Party☐ Amend☐ Change of Venue/Transfer☐ Compel☐ Consolidation☐ Continue☐ Deposition☐ Designate a Mediator☐ Judgment as a Matter of Law (during Trial)☐ Disburse Funds☐ Extension of Time☐ In Limine☐ Joinder☐ More Definite Statement☐ Motion to Dismiss pursuant to Rule 12(b)☐ New Trial☐ Objection of Exemptions Claimed☐ Pendente Lite☐ Plaintiff's Motion to Dismiss☐ Preliminary Injunction☐ Protective Order☐ Quash☐ Release from Stay of Execution☐ Sanctions☐ Sever☐ Special Practice in Alabama☐ Stay☐ Strike☐ Supplement to Pending Motion☐ Vacate or Modify☐ Withdraw☒ Other _____ Notice of Removal

pursuant to Rule 99 (Subject to Filing Fee)

Check here if you have filed or are filing
contemporaneously with this motion an Affidavit of
Substantial Hardship or if you are filing on behalf of an
agency or department of the State, county, or municipal
government. (Pursuant to §6-5-1 Code of Alabama
(1975), governmental entities are exempt from
prepayment of filing fees) ☐

Date:

12/29/2008 2:25:08 PM

Signature of Attorney or Party:

/s SANDY GRISHAM ROBINSON

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

PHYLLIS HORACE,

Plaintiff,

v.

CIVIL ACTION NUMBER:

3-08-cv-1019

LASALLE BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR CERTIFICATE, AS
TRUSTEE FOR CERTIFICATE HOLDERS OF
BEAR STEARNS ASSET BACKED SECURITIES
I LLC, ASSET BACKED CERTIFICATES,
SERIES 2006-EC2; BEAR STEARNS ASSET
BACKED SECURITIES I LLC, ASSET
BACKED CERTIFICATES, SERIES 2006-EC2;
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.; ENCORE CREDIT
CORPORATION; EMC MORTGAGE COMPANY;
BANK OF AMERICA, as successor in
interest to LaSalle Bank National
Association, and DEFENDANTS
A, B, and C, intended to represent
those parties that plaintiff may
have certain claims against as a
result of the actions described in
plaintiff's complaint, Plaintiff
avers that the identities of the
fictitious party defendants are
otherwise unknown to plaintiff
at this time, or if their names are
known to plaintiff at this time,
their identities as proper party
defendant are not known to plaintiff
at this time, but their true names
will be substituted by amendment
when ascertained.

Defendants.

NOTICE OF REMOVAL

The named defendants in this action, other than Encore

Credit Corporation, give notice of their removal of the action to the United States District Court for the Middle District of Alabama. As grounds for this notice, the removing defendants show the following:

1. On November 20, 2008, there was filed in the Circuit Court of Russell County, Alabama, a civil action, bearing the case caption shown above and assigned by that Court Civil Action Number 2008-00362.

2. The action is a civil action within the meaning of 28 U. S. C. § 1441(a), and it is removable to this Court because this Court would have original jurisdiction of the action under 28 U. S. C. § 1332 (diversity).

3. There is a single plaintiff in the action, Phyllis Horace. As alleged in the complaint's first paragraph, Phyllis Horace is a resident citizen of Russell County, Alabama.

4. The first named defendant is LaSalle Bank National Association. For purposes of diversity jurisdiction, under 28 U. S. C. § 1348, LaSalle bank is a citizen of the state where its principal office is located, which is Illinois.

5. The next named defendant is Bear Stearns Asset Backed Securities I LLC, Asset Backed Certificates, Series 2006-EC2. That defendant is, for purposes of diversity jurisdiction, a citizen of Delaware and not of Alabama.

6. The next named defendant is Encore Credit Corporation.

That defendant has not been served. Nevertheless, Encore Credit Corporation, is to the best of the removing defendants' information and belief, a corporation organized under the laws of California with its principal place of business in California.

7. The next named defendant is EMC Mortgage Corporation. That defendant is a corporation organized under the laws of the state of Delaware, having its principal place of business in the state of Texas.

8. The next named defendant is Bank of America, N.A. This defendant is a national bank with its principal place of business in North Carolina and, for purposes of diversity jurisdiction, is a citizen of North Carolina.

9. The complaint identifies certain fictitious parties as defendants. Pursuant to 28 U. S. C. § 1441(a), those parties are, for purposes of and removal, due to be disregarded.

10. Based on the foregoing, there is a single plaintiff, who is a citizen of Alabama, and no defendant is a citizen of Alabama. Accordingly, there is "complete diversity" among the parties.

11. As alleged in the complaint, the matter giving rise to the dispute that is the subject of this lawsuit is a mortgage loan to plaintiff in the amount of \$300,263.63 (Complaint, paragraph 11). In addition to claiming compensatory and

punitive damages, plaintiff asserts that defendants are not in fact the holders of her note (see paragraphs 26, 27 and 123), placing the entire loan amount in controversy.

12. This is an action between citizens of different states, and the amount in controversy exceeds \$75,000. The Court would have original jurisdiction of the action under 28 U. S. C. § 1332, and the action may be removed to this Court pursuant to 28 U. S. C. § 1441.

13. Russell County is within this District. 28 U. S. C. § 81 (b) (3).

14. The removing defendants were served with a summons and complaint on several dates between November 24, 2008 and December 2, 2008, and this Notice is timely filed under 28 U. S. C. § 1446 (b).

15. Filed with this notice are (a) a copy of the Complaint in the state court action; (b) a copy of the summons served on the removing defendants; (c) a copy of an Order enjoining foreclosure entered by the state court November 20, 2008, and (d) a copy of an Order setting an injunction bond, also entered November 20, 2008. These constitute all pleadings, process and orders served upon defendants in the state court action.

16. Defendants certify that they are serving upon the clerk of the Russell County Circuit Court a copy of this Notice informing that court of the removal of this action.



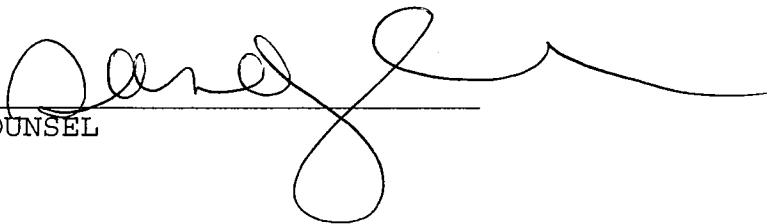
SANDY G. ROBINSON - ROBIS5756
Attorney for Defendants
LaSalle Bank National Association,
Bear Stearns Asset Backed
Securities I LLC, Mortgage
Electronic Registration Systems,
Inc., EMC Mortgage Corporation and
Bank of America, N. A.

**CABANISS, JOHNSTON, GARDNER,
DUMAS & O'NEAL LLP**
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Mobile, Alabama 36652
251/415-7308 Telephone
251/415-7350 Facsimile
sgr@cabaniss.com

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2008, I served the foregoing on opposing counsel by placing same in the United States mail, first class postage prepaid to the following:

Nick Wooten, Esquire
P. O. Box 290
LaFayette, AL 36862



OF COUNSEL